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10/017,630	12/14/2001	William R. Matz	36968/265389	9447

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PTOL-90A (Rev. 04/07)

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/017,630
Filing Date: December 14, 2001
Appellant(s): MATZ ET AL.

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GROUP 3600

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For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/17/2007 appealing from the Office action

mailed 4/3/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Hendricks et al. (US 6,463,585 B1)

Ludtke et al. (US 6,202,210).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (US 6,463,585 B1).**

3. As per **independent Claim 21**, Hendricks discloses a processor-implemented method for predicting content, comprising: receiving content information from a content database (C13 L45-49, local programming – database inherent to programming storage and transmission);

receiving subscriber actions comprising information ***related to*** buttons pushed by a subscriber at a remote control *(Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control)* while viewing content (C11 L35-65); processing the content information and the subscriber actions; and predicting future clickstream data that will describe buttons pushed in the future by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits – equivalent to future subscriber clickstream, as the user has to enter a button to determine the programs they watch).

4. As per **independent Claim 27**, Hendricks discloses a server for predicting subscriber actions, the server operative to: receive content information from a content database (C13 L45-49, local programming) and subscriber actions from a subscriber-action database, the subscriber actions comprising information ***related to*** buttons pushed by a subscriber at a remote control *(Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control)* while viewing content (C11 L35-65); process the content information and the subscriber actions; predict future buttons pushed by the subscriber; and create tailored media content that corresponds to the predicted future buttons pushed (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits – equivalent to future subscriber clickstream, as the user has to enter a button to determine the programs they watch).

5. As per **independent Claim 32**, Hendricks discloses a computer readable media comprising instructions for: analyzing content information from a content database (C13 L45-49, local programming); analyzing subscriber actions from a subscriber-action database, the subscriber

actions comprising information *related to* buttons pushed by a subscriber at a remote control

(Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber

interface, remote control) while viewing content (C11 L35-65); and predicting future buttons

pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted

advertising based on predicted/analyzed customer program watching habits – equivalent to

future subscriber clickstream, as the user has to enter a button to determine the programs they

watch).

6. As per new **independent Claim 53**, Hendricks discloses a device, comprising: a processor

communicating with memory, the processor executing software stored in the memory to

receive content information from a content database (C13 L45-49, local programming);

receive subscriber actions comprising information *related to* buttons pushed by a subscriber

at a remote control *(Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60,*

subscriber interface, remote control) while viewing content (C11 L35-65); and predict future

buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated

targeted advertising based on predicted/analyzed customer program watching habits –

equivalent to future subscriber clickstream, as the user has to enter a button to determine the

programs they watch).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a)   A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art
> are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 26, 31, 37, 45-47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Ludtke et al. (US 6,202,210).**

9. As per Claims 26, 31, 37, and 45, Hendricks fails to expressly disclose wherein the processor receives buttons pushed by the subscriber to receive an alternate source of content.

10. Ludtke teaches monitoring viewer histories to include programming from additional AV sources/DVD player for marketing purposes (Fig.5, C7 L25-39).

11. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein the processor receives actions taken by the subscriber to receive an alternate source of content, as disclosed by Ludtke in the system disclosed by Hendricks, for the advantage of providing a method/system for predicting content, with the ability to increase system effectiveness by analyzing customer viewing histories on all available programming sources.

(10) Response to Argument

12. As per Independent Claims 21, 27, 32, and 53, the Appellant has made the argument that the sited prior art fails to teach or suggest predicting future buttons pushed by the subscriber or predicting future clickstream data that will describe buttons pushed in the future by the subscriber.

13. The purpose of instant invention is to analyze/compare media content with user actions (buttons pushed / clickstream data) to determine how a user reacts to media content provided (advertising / programming). The purpose of analyzing these user reactions is to provide

users with content that they will watch / interact with. In other words, "predicting future buttons pushed by the user" is equivalent to matching content data with users that will keep them watching and stop them from changing the channel (pushing buttons).

14. Furthermore, Hendricks discloses developing program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits (C11 L35-65), in other words – the Hendricks system is predicting (developed programs) what viewers will tune-in/watch/select (programming and advertising) instead of changing the channel or lowering the volume.
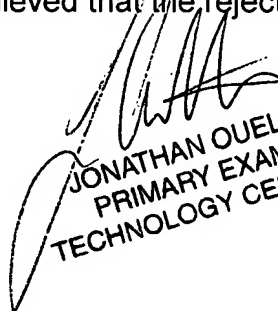
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
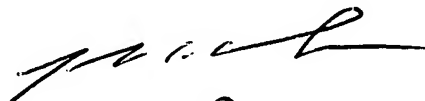
Respectfully submitted,

Jonathan Ouellette

November 25, 2007

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